

**In The United States Patent and Trademark Office
On Appeal From The Examiner To The Board
of Patent Appeals and Interferences**

In re Application of: I-Wen Winnie Tsou et al.
Serial No.: 09/870,342
Filing Date: May 29, 2001
Group Art No.: 3622
Confirmation No.: 7717
Examiner: Michael Bekerman
Title: *Methods, Devices And Systems For Real-Time Instant
Presence With Advertisement (RIPA)*

Mail Stop - Appeal - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Reply Brief

Appellants respectfully submit this Reply Brief under 37 C.F.R. § 41.41(a)(1) in response to the Examiner's Answer electronically sent April 27, 2010.

Argument

In response to the Examiner's arguments in the Examiner's Answer, Appellants respond as follows. Specifically, Appellants will address the arguments presented in the "Response to Argument" section of the Examiner's Answer (pages 9-14).

Independent Claim 1

Appellants respectfully submit that the Examiner has not explained how *De Vries* discloses, teaches or suggests "said physical location information of said business that is transmitted to said wireless device comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites." The Examiner asserts in the Reply Brief that "there is no physical location inherent in any of these options." Appellants disagree, but this is irrelevant since the claim specifies the exact types of physical location information it requires. Furthermore, the Examiner goes on to assert that the particular type of information (i.e., physical location information) is irrelevant and that the disclosure of *any* type of information (i.e., an advertisement) is sufficient to meet this limitation. Appellants respectfully contend that the Examiner is ignoring the words "physical location" as a modifier of the term "information." Furthermore, to the extent that the Examiner is arguing that physical location information is obvious in light of the type of information disclosed in *De Vries*, the Examiner does not explain why it would be obvious to send physical location information instead of the information disclosed in *De Vries*. A conclusory statement that is would be obvious does not meet the requirements of MPEP 2143.

Moreover, *De Vries* does not disclose, teach or suggest "storing click statistics in a database, wherein said click statistics comprise statistics of viewing of said presence information by one or more second instant messaging users." In the Examiner's Answer, the Examiner states that click statistics have not been clearly defined. Appellants disagree. Paragraph 48 of the application defines a click statistic as a statistic "associated with the selection of presence information by instant messaging users." Furthermore, the claim states that "click statistics comprise statistics of viewing of said presence information by one or

more second instant messaging users.” Appellants believe that it is clear from these sources that click statistics describes information about users’ selection/viewing of presence information of other users. However, for a teaching of this limitation, the Examiner cites to Column 7, line 55 – Column 8, line 5 of *De Vries*, which discloses that a user may subscribe to a service that provides the user with updates of the location of the user’s “buddies.” Thus, in *De Vries*, the actual presence information of one user is communicated to another user. On the other hand, the claim requires storing statistics of the users who actually view the location/presence information of another user/buddy. There is not any disclosure in *De Vries* of the storing of this information.

For at least these reasons, Appellants respectfully submit that Claim 1 is in condition for allowance. Therefore, Appellants respectfully request allowance of Claim 1, as well as the claims that depend from Claim 1. Furthermore, independent Claim 32 includes limitations that are similar to those limitations of Claim 1 discussed above, and thus is allowable for similar reasons. Therefore, Appellants also respectfully request allowance of Claim 32, as well as the claims that depend from Claim 32.

Independent Claim 21

Appellants respectfully submit that *De Vries* does not disclose, teach or suggest “a statistics component to receive and store statistic reports on activity of said instant messaging user in selecting said business information of said business, wherein said statistic reports are received from an instant messaging server of an instant messaging service; and wherein said statistic reports comprise information for business analysis and measurement of a marketing success of said transmitted business information.” For a teaching of this limitation, the Office Action cites to Column 11, lines 53-54 of *De Vries*. However, whether a user is a “coffee drinker or a vegetarian” is determined in *De Vries* by the profile or preferences that are specified by the user, it is not disclosed as being based on “statistic reports on activity of said instant messaging user in selecting said business information of said business.”

The Examiner’s Answer assert that the entry of user profile information is a disclosure of a statistic report sent by the user, but this is clearly not a “statistic report” given the broadest reasonable meaning of that term in light of the present specification.

Furthermore, it is not a statistic report of the user's activity "in selecting said business information of said business." A user providing profile information that the user is coffee drinker or a vegetarian is clearly not related to a user's selection of the previously-recited information of a business. The Examiner attempts to convolute the meaning of this limitation on page 12 of the Examiner's Answer (by saying that it means "storing reports on the activity of the user, and those reports are used in selecting business information to provide a user), but the construction proposed by the Examiner is clearly not consistent with the plain meaning of the words of the claim or with the specification and thus is improper. Furthermore, the Examiner's interpretation of the claim language adds a requirement of providing information to a user, which is clearly not claimed.

Furthermore, there is no disclosure that statistic reports are received from an instant messaging server. As noted above, the Office Action argues that the statistic reports are received from the user (i.e., a report from the user that he or she is a coffee drinker). Now, in this context, the Office Action asserts that statistic reports are received from an instant messaging server. There is no disclosure that updates to a user's profile are received from a server (they would be sent to the server from the user under the Examiner's interpretation of what a statistic report is – i.e., a report from the user that he or she is a coffee drinker). In addition, as asserted above, the user profile information is not a statistic report on activity of an instant messaging user in selecting business information of a business.

Finally, for the same reasons as discussed above in conjunction with Claim 1, *De Vries* does not disclose, teach or suggest that "physical location information of said business comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites."

For at least these reasons, Appellants respectfully submit that Claim 21 is in condition for allowance. Therefore, Appellants respectfully request allowance of Claim 21, as well as the claims that depend from Claim 21.

Independent Claim 28

Appellants respectfully submit that *De Vries* does not disclose, teach or suggest presence information that includes a link to advertisements for a business. With respect to this limitation, the Examiner's Answer asserts that there is "an implicit connection between the presence information and advertisements in *De Vries*." Applicants are unsure what this means. The Examiner has not satisfied the legal requirements to show that *De Vries* inherently teaches sending a link to advertisements and this clearly does not "necessarily follow" from the disclosure of *De Vries*, as required by the law. Furthermore, the Examiner has not explained how it would be obvious to send such a link. Instead, the Examiner improperly tries to vitiate this requirement of the claim. For the reasons previously provided, this is improper.

Furthermore, for the same reasons as discussed above in conjunction with Claim 1, *De Vries* does not disclose, teach or suggest that "physical location information of said business that is sent to said visiting instant messaging user comprises one or more of the following: an address, phone number, directions to said location, email address information of said business, and one or more links to Internet websites."

For at least these reasons, Appellants respectfully submit that Claim 28 is in condition for allowance. Therefore, Appellants respectfully request reconsideration and allowance of Claim 28, as well as the claims that depend from Claim 28.

Conclusion

Appellants have demonstrated that the present invention, as claimed, complies with all statutory requirements for a U.S. Patent. Therefore, Appellants respectfully request the Board to reverse the final rejection of the Examiner and instruct the Examiner to issue a Notice of Allowance with respect to all pending claims.

Appellants believe no fees are due. Nonetheless, the Commissioner is hereby authorized to charge any fee and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: June 2, 2010

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